STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
June 11, 2013

In the Matter of S SANBORN, Minor.

No. 311562
Cheboygan Circuit Court
Family Division
LC No. 10-008078-NA

Before: RONAYNE KRAUSE, P.J., and GLEICHER and BOONSTRA, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's decision to terminate her parental rights to SS, the minor child in issue, arguing both that the grounds for termination were not proven by clear and convincing evidence and that termination was not clearly in the child's best interests. We affirm.

I. BACKGROUND

Respondent is the biological mother of four children: CV, TV, TA, and SS. This case began in May 2010, before SS was born, due to allegations of substance abuse and improper supervision. CV and TV[1] were both placed under the jurisdiction of the court. Respondent and her then husband, Mr. V, received services, but little progress was made.[2] At some point, respondent became involved with Mr. S and became pregnant with SS. Respondent obtained a divorce from Mr. V and married Mr. S before SS was born.

After SS was born, petitioner sought to have her removed several times due to respondent and Mr. S's continued failure to participate in services. The trial court denied several of these motions, but ultimately removed SS in June 2011 after respondent was arrested on charges of perjury and Mr. S was found to be unable to provide for SS. In February 2012, Mr. S voluntarily relinquished his parental rights to SS and released the child for the purpose of adoption. In April 2012, petitioner sought termination of respondent's parental rights to SS, alleging a failure to complete or benefit from services.

[1] TA was placed for adoption at birth and was never under the court's jurisdiction in this case. Around December 2010, TV was removed from this case when his father received sole physical custody and moved him to Colorado.

[2] Mr. V and respondent both voluntarily relinquished their rights to CV.

Evidence established that, during the two years the case had been pending, respondent received the following services for housing, employment, substance abuse counseling, mental health counseling, and parenting skills:

> . . . multiple assistance cases for cash, Medicaid, food assistance, state emergency relief based on a couple of shut-off notices. . . . psychological evaluations, psychiatric evaluations, parent-child observations, a variety of homemaker services, supervised parenting times, other supportive services like WIC and district health department, Early On, NFIS,[3] and Families First. . . . substance abuse assessments and treatment, as all was random drug screens. Twelve-step meetings, including Al-Anon, AA and NA meetings . . . multiple transportation assistance vouchers, reimbursement for mileage, volunteer transporters, and bus tokens.

The record showed that respondent never had stable housing. From May 2010 until December 2011 respondent lived in seven different residences. After being kicked out by Mr. S in late December 2011, respondent moved back in with her abusive ex-husband, living on his couch for a while before moving in with a neighbor across the street. There respondent met her present boyfriend and roommate. Respondent and her present boyfriend resided in a hotel for roughly two weeks before moving to their current apartment sometime in February 2012.

Respondent was unemployed from the time services began until the termination hearing, and she gave inconsistent accounts of her job search.

Respondent also failed to consistently and effectively participate in substance abuse counseling. Respondent denied any drug or alcohol abuse, yet her initial substance abuse assessment from July 26, 2010, indicated that she was likely "minimizing her use" and "engaging in unhealthy pattern of substance abuse." She was provisionally diagnosed with alcohol abuse and recommendations included counseling, obtaining a sponsor, attending at least two AA/NA meetings per week, and random drug and alcohol screens. As a result, respondent's case worker referred her to Harbor Hall to complete group therapy sessions and attend twelve-step meetings. When respondent indicated she did not want to go to therapy at Harbor Hall, her case worker referred her to Catholic Human Services instead. Respondent attended one session at Catholic Human Services and never went back, alleging that she had been mistreated while she was there. Respondent's caseworker referred her back to Harbor Hall, but it was March 2011, before respondent attended a counseling session there.

During that March session, a master treatment plan was devised and respondent was referred to educational group therapy and instructed by the therapist to attend AA and Al-Anon meetings. Respondent participated in roughly six sessions of "stage one group," during which time she had two separate counselors. On May 2, 2011, respondent was discharged from Harbor Hall for "no attendance, no participation or progress." On June 6, 2011, respondent was re-referred to Harbor Hall, where she engaged in services with minimal progress.

[3] Northern Family Intervention Services, Inc.

Respondent's participation in mental health counseling was also sporadic and inconsistent. Testimony was generally consistent that respondent utilized all of her supervised visits and was appropriate with SS during the visits. However even after two years of services, respondent never progressed past supervised visitation. By the time of the termination hearing, there were still significant concerns that respondent's patterns of housing instability and placing her dependency needs above the needs of her child placed SS at too great a risk.

Petitioner filed for termination of respondent's parental rights because of respondent's non-compliance with the case treatment plan. Based on the evidence, the trial court found that termination was proper under MCL 712A.19b(3)(c)(*ii*), (g), and (j). It also concluded that termination was in the child's best interests.

II. STANDARD OF REVIEW

We review for clear error a trial court's finding of whether a statutory ground for termination has been proven by clear and convincing evidence and the court's decision regarding a child's best interests. MCR 3.977(K); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App at 296-297. Once the trial court determines that a statutory ground for termination has been established, the court must find by a preponderance of the evidence that termination is in the child's best interests. *In re Moss*, ___ Mich App ___, ___; ___ NW2d ___ (May 9, 2013), slip op at p 3.

III. ANALYSIS

Respondent argues that insufficient evidence supported the termination of her parental rights on any of the three statutory grounds on which the trial court relied. We disagree.

The trial court terminated respondent's rights under MCL 712A.19b(3)(c)(*ii*), (g), and (j):[4]

> (c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds . . . :
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> * * *
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> (*ii*) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the

[4] Respondent argues that the trial court erroneously terminated her rights under four grounds, but respondent has misinterpreted the record.

conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

Respondent argues that termination under 19b(3)(c)(*ii*) was improper because the child had only been out of her care for 10 months at the time of termination and she had made progress toward her goals in that time. This argument ignores the fact that respondent had been under the jurisdiction of the trial court since July 2010. Respondent had received services and been working on the same issues for almost two years at the time of termination with no notable progress. Respondent continued to make choices that catered to her own dependency needs, choices that resulted in an unstable environment not only for her, but for any child that would be brought into it.

Respondent also argues that her service providers had not provided the evaluations and recommendations necessary to address her needs. We disagree.

The record clearly indicates that counselors were hindered in their ability to help respondent either by respondent's own noncompliance, or the fact that they were too busy helping respondent with quality of life issues to ever move forward on any actual counseling. Despite the services provided over a nearly two year period, respondent had not progressed beyond unsupervised visits with SS and still needed a minimum of six months of consistent individual counseling to address her personality issues. Given SS's young age and that she had already been in care for over 80 percent of her life, the record clearly supported the trial court's conclusion that termination was proper under subsection 19b(3)(c)(*ii*). See *In re AH*, 245 Mich App 77, 87-88; 627 NW2d 33 (2001). The same evidence also supports termination under MCL 712A.19b(3)(g). *In re Trejo*, 462 Mich at 362-363 (concluding that when a respondent had problems with counseling and constantly changes counselors and quits counseling, the "evidence of respondent's slow progress in counseling established the alleged ground for termination under subsection 19b(3)(g)").

The record also supported the trial court's conclusion that, based on respondent's conduct or capacity, SS would be harmed if returned to respondent. MCL 712A.19b(3)(c)(j). The evidence showed that respondent failed to comply with the substance abuse services; had unresolved mental health issues, particularly related to dependency problems; made poor decisions when it came to protecting her children and was at a high risk for neglectful behavior. See *In re Utrera*, 281 Mich App 1, 25; 761 NW2d 253 (2008).

Respondent also argues that the trial court clearly erred in concluding that termination was in SS's best interests. We disagree.

MCL 712A.19b(5) provides, "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." The trial court determined that termination was in the child's best interests because, even after almost two years of services: respondent had made little to no progress on issues of permanency, safety and stability; had never obtained unsupervised visitation; and still had a minimum of at best six months of counseling just to address mental health issues. The trial court determined that, under the circumstances and given the age of the child, six months was too long for SS to wait. SS was doing very well in foster care and had "clearly bonded" with her foster parents. A child's need for permanency and stability may be considered in determining the best interests. *In re VanDalen*, 293 Mich App 120, 141; 809 NW2d 412 (2011). We find no clear error in the trial court's determination that termination had been proven by a preponderance of the evidence to be in the child's best interests.

Affirmed.

/s/ Amy Ronayne Krause
/s/ Elizabeth L. Gleicher
/s/ Mark T. Boonstra